

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8712 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HEMENDRA RANCHHODBHAI

MOTIVARAS

Versus

GUJARAT STATE FINANCIAL CORPORATION

Appearance:

MR AJ SHASTRI for Petitioner

MR DAXESH T DAVE for Respondent Nos. 1 to 3.

NOTICE SERVED BY DS for Respondent No. 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 03/04/98

ORAL JUDGEMENT

Rule. Mr Daxesh Dave, learned counsel waives service of Rule for respondent Nos. 1 to 3. In the facts and circumstances of the case, the matter is taken up for final disposal today.

2. The petitioner had taken a loan for an amount of Rs. 3,42,000/- and another loan of Rs. 66,000/- from the respondent Corporation. The petitioner had repaid a

part of the aforesaid amounts, but the petitioner committed certain defaults and did not pay the instalments as per the agreements. Hence, the respondent Corporation recalled both the loan amounts and took over possession of the factory premises of the petitioner and also issued an advertisement in November, 1997 for auctioning the petitioner's unit. At the auction proceedings, the offer of Dilipbhai Premji Todermal, respondent No. 4 herein, was found to be the highest offer for a sum of Rs. 5,00,000/ and he had deposited the Earnest Money Deposit of Rs. 10,000/- with the respondent Corporation and sale letter was also issued in his favour. Hence, he has been joined as respondent No. 4 in the present petition.

3. While issuing notice, this Court granted ad-interim injunction restraining the respondents from handing over possession of the unit to the auction purchaser or to any other third party and from executing any documents in that behalf on condition that the petitioner deposited a sum of Rs. 2,00,000/- by 10.12.1997. That condition was complied with. Thereafter by order dated 20.2.1998, this Court directed the petitioner to deposit a further sum of Rs. 2,18,000/- in this Court by 5.3.1998 and on that condition the ad-interim relief was ordered to continue. The aforesaid condition is also complied with. In the result, the petitioner has already deposited in this Court the sum of Rs. 4,18,000/- in the aggregate. The petitioner has, thus, paid up the instalment amounts as per the agreements so as to clear the default amounts and, therefore, it would be just and proper to direct the respondent - Corporation to return possession of the unit to the petitioner and to consider the petitioner's representation to grant reschedulement for repaying the loan amounts. For this purpose, the petitioner shall approach the respondent Corporation and the Competent Authority of the respondent - Corporation shall sympathetically consider the petitioner's representation for reschedulement bearing in mind that the petitioner has already deposited Rs. 4,18,000/- in this Court which is to be paid over to the respondent Corporation upon disposal of this petition.

There is some dispute regarding the amount which is due and payable by the petitioner to the respondent Corporation. It will be open to the petitioner to approach the respondent Corporation for sorting out that dispute. After the amount is worked out, the petitioner shall pay the respondent Corporation as per the reschedulement which will be granted to him. In case the

petitioner thereafter commits any default in paying up the amount as per the reschedulement, the respondent Corporation will be at liberty to take action in accordance with law.

4. It is required to be noted that respondent No. 4 was served on 5.3.1998, but has chosen not to appear in these proceedings. As and when respondent No. 4 approaches the respondent - Corporation for refund of the Earnest Money paid by him, the respondent-Corporation will take appropriate decision.

5. The amount of Rs. 2,00,000/- deposited by the petitioner pursuant to this Court's order dated 3.12.1997 and further amount of Rs. 2,18,000/- deposited by the petitioner pursuant to this Court's order dated 20.2.1998 i.e. the total amount of RS. 4,18,000/- shall be permitted to be withdrawn by the respondent - Corporation. The respondent Corporation shall return possession of the unit to the petitioner on or before 13.4.1998.

6. In view of the aforesaid directions and observations, the petition is disposed of. Rule is made absolute to the aforesaid extent.

There shall be no order as to costs.

April 3, 1998 (M.S. Shah, J.)